

Report to Development Control Committee

Agenda
Item:
ED09/13

Meeting Date: 19 April 2013
Portfolio: Economy and Enterprise
Key Decision: Not Applicable:
Within Policy and
Budget Framework YES
Public / Private Public

Title: CONFIRMATION OF TREE PRESERVATION ORDER 263
Report of: Director of Economic Development
Report Number:

Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 263; No's 35 and 49 Greenacres, Wetheral, and objections to the making of the tree preservation order.

Recommendations:

Tree Preservation Order 263 is confirmed without modification

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

- 1.1** The Town and Country Planning Act 1990, Section 198 provides that Local Planning Authorities may make a Tree Preservation Order if it appears to them to be “expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”. The Department of Environment Transport and the Regions document, “Tree Preservation Orders A Guide to the Law and Good Practice” advises that “Tree Preservation Orders should be used to protect selected trees and woodland if their removal would have a significant local impact on the environment and its enjoyment by the public”.
- 1.2** Tree Preservation Order 263 is one of three new tree preservation orders made to replace Tree Preservation Order 11 as part of the ongoing tree preservation order review. The other two tree preservation orders were confirmed through the Councils scheme of delegation. A copy of the plan relating to Tree Preservation Order 263 is attached hereto at Appendix 1
- 1.3** Tree Preservation Order 263 seeks to provide continuing protection to two beech trees that existed on site before the development of Greenacres.
- 1.4** A letter of objection to the making of the tree preservation order was received by Carlisle City Council on 26 February 2013. The letter of objection and the Officers reply are attached hereto at Appendix 2.
- 1.5** The objections can be summarised as follows
- (i) Loss of light to the property; and
 - (ii) leaf fall and associated problems; and
 - (iii) moss on the footpath; and
 - (iv) responsibility for the tree; and
 - (v) damage caused by the roots.
- 1.6** Officers response to the objections are as follows
- (i) There is no right of light to a garden. Whilst there is a right of light to a dwelling, this does not mean that there is a right to full and uninterrupted light, nor indeed any right to light at all depending on the circumstances. A right to light may be acquired if it can be shown there has been 20 years of uninterrupted light. In relation to trees this would be difficult as the loss of light comes about gradually as the tree grows. It would be even more difficult in this case, where the tree pre-dates the house and has always cast some shade on it. However, this does not mean that there may not be a way to improve matters. Careful pruning may help improve light attenuation to the

garden and dwelling, albeit an application to carry out the works would need to be made. This has been the case since 1958 when the original tree preservation order was made prior to the development of Greenacres; and (ii) Leaf fall is considered a seasonal nuisance. Cleaning out gutters and sweeping and raking leaves from gardens is just part and parcel of property ownership and maintenance. Gutter guards are available which will help reduce the problem of leaves in the gutters and the need for frequent cleaning; and

(iii) The moss could be removed to reduce the slip hazard, it would not require the removal of the tree to do this; and

(iv) The tree owner is responsible for the tree. They should check their trees to make sure there is no reasonably foreseeable risk of branch, or whole tree failure. If a risk is identified that needs work to be carried out to the tree, the tree preservation order will not prevent this, albeit an application to work on the tree may be required. Unfortunately no tree is entirely safe and branch or tree failure is possible during extreme weather events. This is considered an Act of God and removal of the tree to prevent such acts is not considered appropriate or reasonable; and

(v) The question of whether or not the roots have encroached into the garden cannot be answered without an investigation. Roots do not respect boundaries and will grow where conditions are suitable. If the roots were causing damage to the property there would be evidence of this. Subsidence of footings results in large tell tale cracks in masonry and walls. Root ingress into drains causes blockages resulting in the drains backing up and overflowing. The problems of blocked drains, and damage to foundations is not unknown, but can be adequately managed. How this would be done would depend on the individual circumstances which could only be assessed at the time when the damage becomes evident.

2. PROPOSALS

2.1 Having duly considered the objections and Officers observations Members have three options

(1) Confirm the tree preservation order, that is make it permanent without modification; or

(ii) decline to confirm the tree preservation order; or

(iii) confirm the tree preservation order with modifications, that is make the tree preservation order permanent in relation to some of the trees specified in the order, but to exclude other trees from the order.

3. CONSULTATION

- 3.1** The Owners of the affected property, and all those with an interest in the land were sent copies of the tree preservation order. A covering letter was enclosed explaining how to make representations to the Local Planning Authority.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1** Tree Preservation Order 35 and 49 Greenacres, Wetheral, be confirmed without modification
- 4.2** The Tree Preservation Order will ensure the continuity of the visual amenity provided by the trees which have enjoyed statutory protection since 1958.

5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 5.1** Helps create a pleasant environment in which to live and work and engendering a pride in place.

Contact Officer: Charles Bennett

Ext: 7535

Appendices attached to report: Appendix 1: Tree Preservation Order Plan & Statement Of Reasons
Appendix 2: Letters Of Objection And Officers Replies

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- The Town and Country Planning Act 1990; DETR Tree Preservation Orders A Guide to the Law and Good Practice

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's - None

Community Engagement – None

Economic Development – None

Governance – The validity of the tree preservation order cannot be challenged in any legal proceedings except by way of application to the High Court. An application must be made within six weeks from the date of the confirmation of the tree preservation order.

This Tree Preservation Order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including local residents, who have made representations, have the right to a fair hearing and to this end the Committee must give full consideration to their comments.

Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land and business assets. In taking account of all material considerations, including Council policy it is considered that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the Tree Preservation Order is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

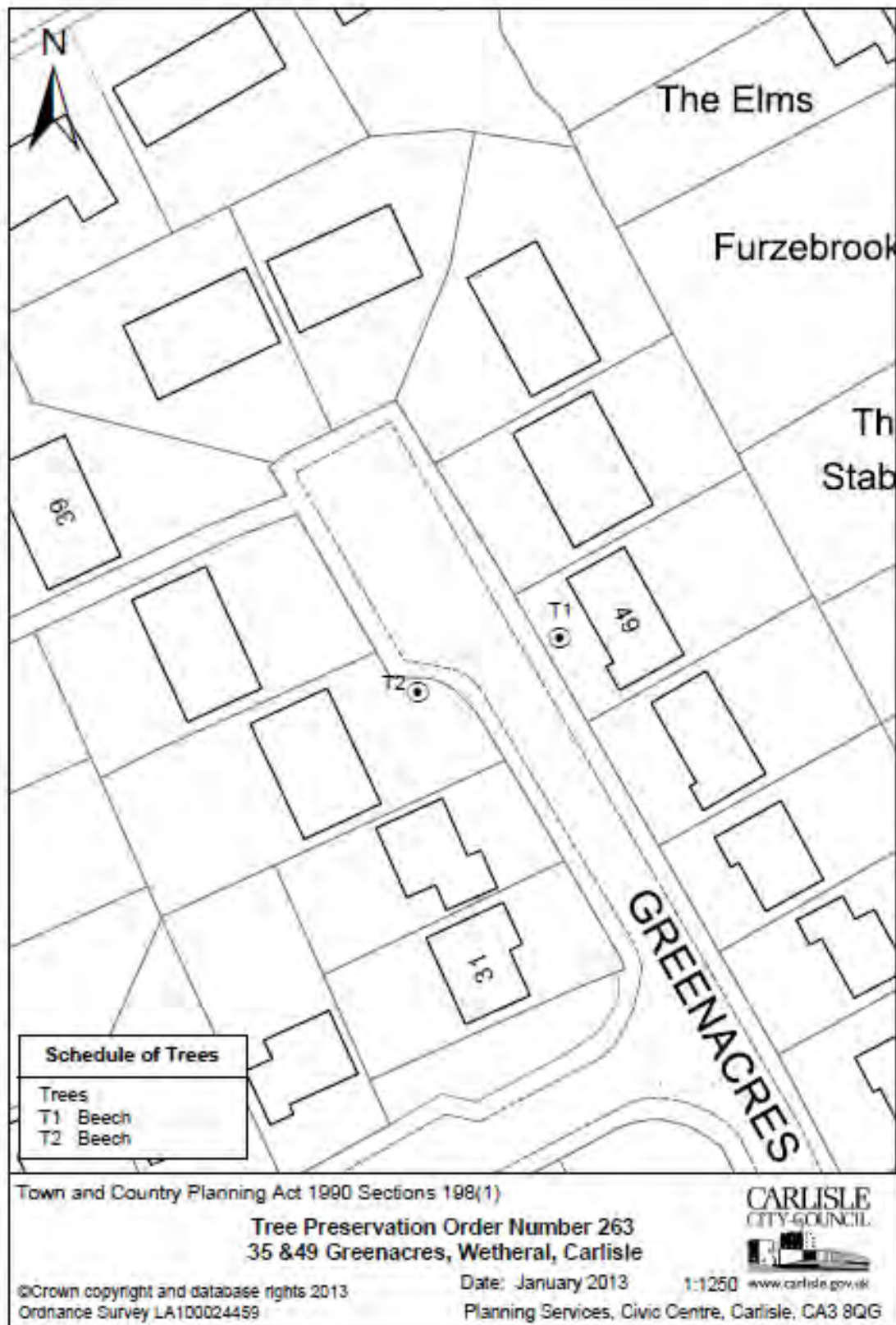
Members should note that the trees protected by Tree Preservation Order 263 have enjoyed the protection of Tree Preservation Order 11 since 1958. Consequently, confirming Tree Preservation Order 263 without modification will not add or increase any burden on the land owner or other residents than has existed for over 50 years.

Local Environment – The tree preservation order will ensure that the trees continue to provide a significant degree of amenity to the Local environment and its enjoyment by the public.

Resources - Compensation may be payable if a person establishes that loss or damage has been caused or occurred in consequence of the refusal of consent, the grant of consent subject to conditions, or the refusal of consent, subject to the restrictions and exemptions set out in The Town and Country Planning (Tree Preservation)(England) Regulations 2012. Necessary works to the trees will not be refused, so it is not envisaged that a claim for compensation will occur.

APPENDIX 1

TREE PRESERVATION ORDER PLAN & STATEMENT OF REASONS



TREE PRESERVATION ORDER No. TPO 263 35 & 49 GREENACRES, WETHERAL, CARLISLE, CUMBRIA

STATEMENT OF REASONS

By virtue of section 198 of the Town and Country Planning Act 1990 the local planning authority may make a tree preservation order where it appears to the authority that it is expedient in the interests of amenity to make provision for the protection of trees and woodlands in its area.

The guidance set out in the Department of the Environment Transport and the Regions document 'Tree Preservation Orders, A Guide to the Law and Good Practice' states that tree preservation orders should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.

The trees, by virtue of their size and prominent location are clearly visible to the public from the estate road and footpath. They are prominent features that provide mature landscaping within the modern development.

The trees are included within A1 of Tree Preservation Order 11, made in 1958. Tree Preservation Order 11 has been reviewed. To ensure the continuing protection of the significant trees protected Tree Preservation Order 11 at this location a new tree preservation order is considered appropriate.

It is considered that the loss of these trees would have a detrimental impact on the area and its enjoyment by the public. Therefore, to ensure the continuation of the visual amenity that the trees provide the Council of the City of Carlisle considers it expedient in the interests of amenity to protect the trees by means of a Tree Preservation Order.

LETTERS OF OBJECTION AND OFFICERS REPLIES

Tree Preservation Order



33 Greenacres
Wetheral
Carlisle
Cumbria
CA4 8LD

20 February 2013

Director of Governance
Carlisle City Council
Civic Centre
Carlisle
CA3 8QG

Your Ref: PG3/186 TPO 263

PLANNING SERVICE	
REF:	
28 FEB 2013	
RECORDED	
SCANNED	
PASSED TO	
ACTION	

Dear Sir

Ref: Town and Country Planning Act 1990
Town and Country Planning (Tree Preservation) (England) Reg.2012
Tree Preservation Order: The City of Carlisle (35 & 49 Greenacres
Wetheral, Carlisle, Cumbria. Tree Preservation Order 2013 No.263

In response to your letter dated 4 February I object to the Tree Preservation Order 2013 No.263 on the following grounds:

- (a) it affects the light into my property.
- (b) falling leaves are a nuisance clogging up the gutters that need removing at least three times a year.
- (c) thick moss accumulated over many years on the footpath beneath the tree of number 35 is a hazard and extremely dangerous in wet weather.

The extreme weather conditions now experienced here in the northwest, especially high winds, is a concern for me and as both the trees in question are in close proximity to my property, who would be liable for any damages caused should they fall or branches become detached?

Finally the root system of the tree in number 35 is another worrying factor I should like to raise, i.e. have they encroached onto my property disturbing the footings and drainage system?

A reply would be much appreciated in respect of my last two paragraphs.

Yours faithfully

Mrs. June Dixon



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Charles Bennett

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01228 817535

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CharlesB@carlisle.gov.uk

Your Ref:

Our Ref:

CB/TPO 263

28 February 2013

Dear Mrs Dixon

OBJECTION TO TREE PRESERVATION ORDER 263

I refer to your letter dated 20 February 2013 setting out your objections to Tree Preservation Order 263. Your objections are summarised below;

- Loss of light.
- Leaf fall.
- Accumulation of moss on the footpath.
- Responsibility for the tree.
- Damage caused by roots.

I will deal with each of these in the order set out above.

- There is no right of light to a garden. Whilst there is a right of light to a dwelling, this does not mean that there is a right to full and uninterrupted light, nor indeed any right to light at all depending on the circumstances. A right to light may be acquired if you can show you have had 20 years of uninterrupted light. In relation to trees this would be difficult as the loss is gradual. It would be even more difficult as in this case, where the tree pre-dates the house and so has always cast some shade on it. However, this does not mean that there may not be a way to improve matters. Some careful pruning may help improve light attenuation to the garden and dwelling, albeit an application to carry out the works would need to be made. This has been the case since 1958 when the original tree preservation order was made prior to the development of Greenacres.
- Leaf fall is considered a seasonal nuisance. Cleaning out gutters and sweeping and raking leaves from gardens is just part and parcel of property ownership and maintenance. There are gutter guards available which will help reduce the problem of leaves in the gutters and the need for frequent cleaning.
- Moss accumulation, as you point out, takes many years. The moss could be removed, (which would be a matter for the Highway Authority), to reduce the slip hazard, it would not require the removal of the tree to do this.
- The tree owner is responsible for the tree. They should check their trees to make

sure there is no reasonably foreseeable risk of branch, or whole tree failure. If a risk is identified that needs work to be carried out to the tree, the tree preservation order will not prevent this, albeit an application to work on the tree would be required. Unfortunately no tree is entirely safe and branch or tree failure is possible during extreme weather events. This is considered an Act of God and removal of the tree to prevent such acts is not considered appropriate.

- I cannot answer the question of whether or not the roots have encroached into your garden. Roots do not respect boundaries and will grow where conditions are suitable. If the roots were causing damage to your property there would be evidence of this. Subsidence of footings results in large tell tale cracks in masonry and walls. Root ingress into drains causes blockages resulting in the drains backing up and over flowing. The problems of blocked drains, and damage to foundations is not un-known and can be adequately managed. How this would be done would depend on the individual circumstances which could only be assessed at the time when the damage becomes evident.

In conclusion, the problems of light, leaf fall and moss on the path can be managed by pruning, the use of gutter guards and cleaning the path. The tree owner is responsible for their tree whether or not the tree is protected, and damage can be dealt with in an appropriate manner dependent upon the circumstances once it becomes evident.

Furthermore, Tree Preservation Order 263 is being made to replace the historic Tree Preservation Order 11. Tree Preservation Order 11 was made in 1958 to protect trees in and around the Plains Road area of Wetheral, including the tree outside 35 Greenacres, and pre-dates the building of Greenacres. To all intents and purposes there would be no change to the status of the tree, or those charged with responsibility for the tree by the updating of the tree preservation order.

I hope I have answered your objections to the making of the Tree Preservation Order 263 and you are able to withdraw your objections. Where objections are made to the making of a tree preservation order, and these cannot be addressed to the satisfaction of the objector, the tree preservation order is considered by the Development Control Committee to decide if it should be made permanent.

If you are unable to withdraw your objections it is my intention to bring the tree preservation order before the Development Control Committee at its meeting on the 19 April 2013. As an objector you have a right to speak at the Committee, and I have enclosed a copy of the right to speak leaflet, which provides information on speaking at the Committee, and how to register your right to speak.

Yours sincerely

Charles Bennett
Landscape Architect/Tree Officer